IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2090 OF 2007
IN
CRI.APPEAL NO. OF 2007

M/s.Shanti Developers ..Applicant

Vs.

Shrikant Maruti Bhosale
and Anr. ..Respondents

...

Mr.V.Y.Jadhav Advocate for Applicant
Mr.A.R.Patil A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : NOVEMBER 27, 2007

P.C.

1. The applicant has filed this application for leave to file appeal against the judgment and order dated 23.4.2007 passed in Summary Case No. 1752 of 2004 passed by the learned IVth Judicial Magistrate, F.C. Satara. By the said judgment and order, the learned Magistrate acquitted the Respondent No.1-accused of the offence under Section 138 of Negotiable Instruments Act. The

amount involved is Rs.79,500/-.

2. Heard the learned advocate for the applicant-original complainant. I have perused the judgment and order and the evidence produced by the learned advocate for the applicant. From the evidence on record especially of the Complainant, it is seen that after the construction work was over, the possession of the flat was to be given to the accused along with completion certificate. However, the construction of the flat was not completed within time. So also, possession of the flat was not given. The possession of the flat remained with the complainant which is admitted by the complainant in his cross-examination. Moreover, the complainant has also admitted in his cross-examination that the completion certificate has not been obtained from the Bombay Municipal Corporation, so also the society has not been registered. The complainant has also admitted in his deposition that the respondent-accused from time to time has paid charges for electricity connection, extra construction work etc. It is also admitted that the construction work was not completed in time. From this, it is seen that the

terms of the contract were violated. If the terms of the contract were violated, it follows that no enforceable right or liability would arise. The learned Magistrate has acquitted the respondent no.1-accused on this ground. Looking to the evidence on record, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

3. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the

learned Magistrate is a reasonable and possible view, hence, no interference is called for.

4. In this view of the matter, application for leave to appeal is rejected. Consequently, appeal stands dismissed.

[SMT. V.K.TAHILRAMANI, J.]